

Honorable Marvin Mandel
Governor of Maryland
State House
Annapolis, Maryland 21404

Re: House Bill 522

Dear Governor Mandel:

At your request, we have reviewed House Bill 522, which amends Article 81, Section 277, subsection (t). At the present time, subsection (t) provides for collection, by the State Department of Assessments and Taxation, of a tax payable upon the filing with the Department of Articles of Sale, Lease, Exchange or other transfer of all or substantially all of the property and assets of a corporation. House Bill 522 seeks to transfer this tax collection burden to the counties and Baltimore City. House Bill 522 also amends Article 81, Section 277A to relieve the Department of Assessments and Taxation of the duty of collecting local transfer taxes imposed on the sale or transfer of real property, upon the filing of Articles of Sale, Lease, Exchange or other transfer of all or substantially all of the property and assets of a corporation. Finally, this House Bill seeks to amend Article 81, Section 278A, which deals with the State property tax on such transfers, to provide a time in which the taxes are to be payable.

In our view, while this bill is constitutional, it contains a serious legal defect which should be carefully considered prior to signing it into law. The purpose clause of the bill states that the bill requires "the payment of such taxes within a certain period of time." In fact, in dealing with each of the taxes, the effect of the bill is to provide an uncertain, open-ended and arguably nonsensical payment date for the tax.

For example, in amending Section 277, subsection (t), the bill divides subsection (t) into three sections. Subsection (t)(1) provides that the tax is imposed on the transfer or title to real property and is payable upon the filing with the State Department of Assessments and Taxation of Articles of Sale, Lease, Exchange or other transfer of all or substantially all of a corporation's property and assets. Subsection (t)(2) provides that the tax is to be collected at the local level pursuant to an agreement between the subdivision and the Clerk of the Circuit Court. It is subsection (t)(3) which creates the difficulty. That section provides that the tax shall be "due and payable not less than 30 days after the date on which the articles became effective under the Corporations and Associations Article upon filing with a county or Baltimore City by the transferee of a deed